

EVIDENCE — DISCOVERY — *BRADY* — Discovery rulesRevised 11/2009

There is no general federal constitutional right to discovery in a criminal case. *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977); *State v. Tucker*, 157 Ariz. 433, 438, 759 P.2d 579, 584 (1988). The federal constitution gives the defense no greater right to discovery than exists under Arizona law. See *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987); *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977). Thus, state courts are generally free to limit the nature and extent of discovery in criminal cases. *State ex rel. Romley v. Superior Court*, 172 Ariz. 232, 238, 836 P.2d 445, 451, *citing Weatherford*, 429 U.S. at 559.

Nevertheless, although there is no general "right to discovery," the defendant has a due process right, under both the federal and Arizona constitutions, to present a defense. *Chambers v. Mississippi*, 410 U.S. 284 (1973); *see also State v. Rutledge*, 205 Ariz. 7, 10, 66 P.3d 50, 53 (2003) (referencing the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, as well as Article 2, Section 24, of the Arizona Constitution). The right to present a defense includes a right to effectively cross-examine witnesses at trial. *Davis v. Alaska*, 415 U.S. 308 (1974); *Chambers v. Mississippi*, 410 U.S. 284 (1973); *State ex rel. Romley v. Superior Court*, 172 Ariz. at 236, 836 P.2d at 449. The defendant also has a due process right to have the prosecution disclose all evidence that is favorable to the defendant and material to guilt or punishment. *Brady v. Maryland*, 373 U.S. 83. Therefore, the rules of discovery must include procedures to ensure that the defense receives all of the evidence that the prosecutor is constitutionally required to disclose. See *id.* Rule 15.1(b)(8)¹, Ariz. R. Crim. P., codifies the prosecutor's obligations under *Brady*.

¹ Rule 15.1(b) provides in part that "the prosecutor shall make available to the defendant . . . (8) All then existing material or information which tends to mitigate or negate the defendant's guilt as to the offense charged, or which would tend to reduce

Because *Brady* requires the prosecutor to disclose evidence that is material “either to guilt or to punishment,” 373 U.S. at 87, the prosecution’s duty under *Brady* applies to sentencing as well as to trial. *State v. Ramirez*, 178 Ariz. 116, 128, 871 P.2d 237, 249 (1994) (*citing United States v. Severson*, 3 F.3d 1005, 1013 (7th Cir. 1993)).

the defendant's punishment therefor.”